

AMENDED IN ASSEMBLY JUNE 22, 2005

AMENDED IN SENATE APRIL 19, 2005

SENATE BILL

No. 323

Introduced by Senator Migden

February 16, 2005

An act to amend ~~Sections 6485 and 6514~~ *Section 7155* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Migden. Sales tax fraud.

The Sales and Use Tax Law imposes ~~a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The State Board of Equalization administers the application of, and the collection of, the taxes imposed by that law.~~ Existing law imposes penalties for failure to file returns and for failure to remit the total taxes owed, ~~including a 25% penalty if a determination is made that the failure to file the return or the failure to remit the tax is due to fraud or an intent to evade taxes.~~

This bill would provide for a rebuttable presumption, affecting the ~~burden of evidence production, of fraud or an intent to evade taxes, if a determination is made that any portion of the taxes, for which a return is not filed or that are not remitted, represent sales taxes that were that any person who knowingly collected by a retailer as sales tax reimbursement.~~ This bill would also provide that, if this determination is made, the ~~25%, and who fails to timely remit that sales tax reimbursement to the State Board of Equalization, is liable for a penalty shall be automatically imposed of 50% of the amount not timely remitted, as specified. The State Board of Equalization may relieve the penalty under specified circumstances.~~

This bill would also require a person to certify, under penalty of perjury, the facts upon which he or she bases his or her claim for relief, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7155 of the Revenue and Taxation Code
2 is amended to read:

3 7155. (a) (1) Any person who, for the purpose of evading
4 the payment of taxes due under this part, knowingly fails to
5 obtain a valid permit prior to the date on which the first tax return
6 is due shall be liable for a penalty of 50 percent of any tax
7 determined to be due for the period during which the person
8 engaged in business in this state as a seller without a valid
9 permit.

10 ~~(b)~~

11 (2) This ~~section~~ subdivision shall not apply to any person
12 whose measure of tax liability over the period during which he or
13 she was engaged in business in this state as a seller without a
14 valid permit averaged one thousand dollars (\$1,000) or less per
15 month.

16 ~~(c)~~

17 (3) This ~~section~~ subdivision shall not apply to the amount of
18 taxes due on the sale or use of a vehicle, vessel, or aircraft, if the
19 amount is subject to the penalty imposed by Section 6485.1 or
20 Section 6514.1.

21 (b) (1) Any person who knowingly collects sales tax
22 reimbursement, as defined in Section 1561.1 of the Civil Code,
23 and who fails to timely remit that sales tax reimbursement to the
24 board, shall be liable for a penalty of 50 percent of the amount
25 not timely remitted.

1 (2) This subdivision shall not apply to any person whose
2 measure of liability for the unremitted sales tax reimbursement
3 described in paragraph (1) averages one thousand dollars
4 (\$1,000) or less per month or does not exceed 5 percent of the
5 total measure of tax for which the tax reimbursement was
6 collected for the period in which tax was due, whichever is
7 greater.

8 (3) If the board finds that a person's failure to make a timely
9 remittance of sales tax reimbursement is due to a reasonable
10 cause and circumstances beyond the person's control, and
11 occurred notwithstanding the exercise of ordinary care and the
12 absence of willful neglect, the person shall be relieved of the
13 penalty imposed by this subdivision. Any person seeking to be
14 relieved of the penalty shall file with the board a statement,
15 under penalty of perjury, setting forth the facts upon which he or
16 she bases his or her claim for relief.

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the
22 penalty for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition of a
24 crime within the meaning of Section 6 of Article XIII B of the
25 California Constitution.

26 ~~SECTION 1. Section 6485 of the Revenue and Taxation~~
27 ~~Code is amended to read:~~

28 ~~6485. (a) If any part of the deficiency for which a deficiency~~
29 ~~determination is made is due to fraud or an intent to evade this~~
30 ~~part or authorized rules and regulations, a penalty of 25 per cent~~
31 ~~of the amount of the determination shall be added thereto.~~

32 ~~(b) If a determination is made that any part of a deficiency~~
33 ~~determination represents sales tax reimbursement, as defined in~~
34 ~~Section 1656.1 of the Civil Code, that was knowingly collected~~
35 ~~by a retailer from customers as sales tax reimbursement and was~~
36 ~~not timely remitted to the board, there shall be a rebuttable~~
37 ~~presumption affecting the burden of producing evidence that the~~
38 ~~deficiency is due to fraud or an intent to evade the taxes imposed~~
39 ~~under this part. If this determination is made, the penalty required~~

1 by subdivision (a) shall be imposed as a jeopardy determination
2 in accordance with Article 4 (commencing with Section 6536):

3 SEC. 2. Section 6514 of the Revenue and Taxation Code is
4 amended to read:

5 6514. (a) If the failure of any person to file a return is due to
6 fraud or an intent to evade this part or rules and regulations, a
7 penalty of 25 per cent of the amount required to be paid by the
8 person, exclusive of penalties, shall be added thereto in addition
9 to the 10 per cent penalty provided in Section 6511.

10 (b) If a determination is made that any sales tax liability for
11 which the person failed to file a return represents sales tax
12 reimbursement, as defined in Section 1656.1 of the Civil Code,
13 that was knowingly collected by a retailer from customers as
14 sales tax reimbursement and was not timely remitted to the
15 board, there shall be a rebuttable presumption affecting the
16 burden of producing evidence that the failure to file the return is
17 due to fraud or an intent to evade the taxes imposed under this
18 part. If this determination is made, the penalty required by
19 subdivision (a) shall be imposed as a jeopardy determination in
20 accordance with Article 4 (commencing with Section 6536):